85-696 (1)

Supreme Court, U.S.
FILED
SEP 30 1985
JOSEPH F. SPANIOL, JR.
CLERK

CASE NO. A-88
UNITED STATES SUPREME COURT
1985 TERM

STATE OF NEW JERSEY

PLAINTIFF - RESPONDENT

vs.

ROSEMARY HELFRICHT

DEFENDANT-PETITIONER

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY
PETITION FOR WRIT OF CERTIORARI

EDWARD J. McKENNA, JR.
241 MAPLE AVENUE
POST OFFICE BOX 778
RED BANK, NJ 07701
(201) 741-6681
ATTORNEY FOR PETITIONER-
DEFENDANT

QUESTION PRESENTED FOR REVIEW

Whether law enforcement officials responding to an automobile accident call may pursue the investigation by making a nonconsensual, warrantless entry into a private residence.

TABLE OF CONTENTS

		PAGES
1.	Question Presented for Review	1
2.	Jurisdiction Statement	2
3.	Opinions Delivered Below	3
4.	Statement of Case	4 - 7
5.	Legal Argument	8 - 11
6.	Conclusion	12

TABLE OF AUTHORITIES

	CASE	PAGES
1.	Boyd v. United States, 116 U.S. 616 (1886)	8
2.	Elkins v. United States, 364 U.S. 206 (1960)	10
3.	Maryland Penitentiary v. Hayden 387 U.S. 299, 98 S.Ct. 1642, 24 L.Ed. 2d 782 (1967)	9
4.	McDonald v. United States, 335 U.S. 451 (1958)	11
5.	Payton v. New York, 45 U.S. 573 (1980), 100 S.Ct. 1371, 63 L.Ed. 2d (1980)	8
6.	Welch v. Wisconsin, _____ U.S. _____, 104 S.Ct. 2091, 80 L.Ed. 2d 732 (1984)	8, 10

STATUTES

1. Title 28 U.S.C. 1257(3)

TABLE OF APPENDIX

1.	Opinion of New Jersey Superior, Court Appellate Division	PDA 1-3
2.	Order Denying Petition For Certification	PDA 4
3.	Order Granting Stay By New Jersey Supreme Court	PDA 5
4.	Notice of Appeal to Supreme Court, Law Division and Transcript Request	PDA 7 & 8
5.	Notice of Appeal to Superior Court, Appellate Division	PDA 9 & 10
6.	Stay Granted by the Honorable Morton I. Greenberg, J.A.D.	PDA 11
7.	Order Granting Temporary Stay by New Jersey Supreme Court	PDA 12
8.	Denial of Stay by Single Justice	PDA 13

JURISDICTIONAL STATEMENT

Petitioner-Defendant requests this Court to review the Order of the New Jersey Supreme Court entered on June 13, 1985, therein the Court denied Petitioner-Defendant's Petition for Certification.

Petitioner-Defendant now asks this Court to review the denial of that request inasmuch as the Petitioner-Defendant feels that the New Jersey Supreme Court has decided a federal question in a way in conflict with applicable decisions of this Court. The statutory authorization conferring jurisdiction on this Court is to be found in Title 28 U.S.C. 1257(3).

OPINIONS DELIVERED BELOW

An opinion of the New Jersey Superior Court, Appellate Division, is attached hereto as (PDA 1 through 3). [1]

A copy of the transcripts of the proceedings in the Colts Neck Municipal Court on February 17, 1984, and of the proceedings at the Trial De Novo before the Honorable Donald J. Cunningham, J.S.C. are also attached hereto as MCT 1-93 [2] and TDN 1-12 [3], respectively.

No opinion was delivered by the New Jersey Supreme Court which denied certification of the matter on June 13, 1985. A copy of the Order denying certification is attached hereto as (PDA-4).

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1 - PDA refers to Petitioner-Defendant Appendix
2 - MCT refers to Municipal Court Transcript
3 - TDN refers to Trial De Novo Transcript

STATEMENT OF CASE

At approximately 3:55 a.m. on June 20, 1982, Troopers Manus Campbell and Robert Toole of the New Jersey State Police were proceeding to the scene of an accident that had reportedly occurred in Colts Neck, New Jersey. (MCT 3-8 through MCT 13-12) When the Troopers arrived at the scene - located at Dutch Lane Road - they found one unoccupied car (a red Cadillac) bearing the registration 431 NIS. Upon investigation, the Troopers determined that the car had sustained damage on the left side and that the left front tire was flat. After checking papers in the car, the Troopers determined that the car was registered to Craig Helfricht of 23 Downing Hill Lane, Colts Neck, New Jersey. (MCT 13-1 MCT 13-8 through MCT 14-5)

The troopers then proceeding to the Helfricht home, where they arrived at approximately 4:20 a.m. (MCT 18-3)

When the Troopers rang the bell, Craig Helfricht came to the door. Upon questioning, he admitted that he owned the red Cadillac, registered 431 NIS, and that his wife had been operating the car that morning. (MCT 14-8 and MCT 14-17) He refused the Troopers entrance to his

home. (MCT 14-22 MCT 35-22 and MCT 36-25) In fact, Mr. Helfricht asked if they had a warrant to come in the house. (MCT 39-19 and MCT 39-20) The Troopers responded that they did not need a warrant and they forced their way inside the Helfricht home. (MCT 39-22, MCT 14-22 and MCT 55-3) At this point, Rosemary Helfricht appeared. In conversation with the Troopers, she acknowledged that she had been operating the red Cadillac, 431 NIS - she had been taking the babysitter home - when something had run in front of her vehicle causing her to lose control and to have an accident. (MCT 17-2 through MCT 17-12)

In speaking with Mrs. Helfricht at this time, Trooper Campbell noticed the odor of alcoholic beverage on her breath. They also noticed that her speech was apparently slurred and slow. Mrs. Helfricht also had some difficulty saying the alphabet. (MCT 17-12 through MCT 17-20 and MCT 20-1) It should be pointed out, however, that at this time, Mrs. Helfricht was very angry at the presence of the Troopers in her home. (MCT 17-17 and MCT 17-18)

At this point, Mrs. Helfricht was placed under arrest and transported to the State Barracks, Colts Neck, New Jersey. At the barracks, Mrs. Helfricht

and a transcript requested. (PDA 7 & 8)

On April 27, 1984, a trial de novo was held before the Honorable Donald J. Cunningham, J.S.C. For some reason unknown to Petitioner-Defendant, Petitioner-Defendant's first attorney withdrew his Motion to Suppress at the trial de novo. (TDN 2 - 3 through 10)

Thereafter, on June 28, 1984, the Petitioner-Defendant filed a Notice of Appeal with the Superior Court, Appellate Division (PDA 9 & 10) and at the same time filed an Application for Stay of Enforcement of the judgment of conviction, which application was granted by the Honorable Morton L. Greenberg, J.A.D., on June 28, 1984. (PDA 11) Among the issues appealed was the illegal search and seizure at Petitioner-Defendant's home on June 20, 1982. The Appellate-Defendant, a copy of this opinion is attached hereto. (PDA 1 through 3)

Thereafter, an application for continuance of the stay was granted by the New Jersey Supreme Court pending review of Petitioner-Defendant's petition for certification. The Petioner-Defendant's petition again addressed the violation of her Fourth Amendment rights. On June 13, 1985, the Supreme Court ordered that Petitioner-Defendant's petition for certification be denied. (PDA 4)

Petitioner-Defendant then applied to the United States Supreme Court for a stay pending review of her Writ of Certiorari. That request was heard before a Single Justice, the Honorable Byron R. White, and denied. (PDA 13)

LEGAL ARGUMENT

The Fourth Amendment assumes the "right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures". It "was intended to protect the sanctity of a man's home and the privacies of life". Boyd v. U.S., 116 U.S. 616, 630 (1886). Accordingly, it is settled that law enforcement officers cannot make a warrantless and nonconsensual entry into a suspect's home in order to effect an arrest, even if they are felony arrests. Payton v. New York, 45 U.S. 573, 100 S.Ct. 1371, 63 L.Ed. 2d, 639 (1980). In a more recent United States Supreme Court decision, the Court confirmed this interpretation of the Fourth Amendment. Welsh v. Wisconsin, _____ U.S. _____, 104 S.Ct. 2091, 80 L.Ed. 2d 732 (1984). In Welsh, the Court ruled that a warrantless, nighttime entry of the defendant's home to arrest him for suspected drunk driving was prohibited by the special protection afforded the individual in his home by the Fourth Amendment. At the time of the defendant's arrest in Welsh, drunk driving was a non-jailable offense. It is respectfully submitted that the violation of which petitioner was convicted under New Jersey law is essentially a non-criminal offense even

though jail is possible for some traffic and disorderly person offenses in our state. The law prohibiting drunk driving is codified under Title 39 of New Jersey Statutes Annotated, the motor vehicle statute and it is not included as a crime in our state's criminal code.

It should be noted that certain warrantless searches are allowed only when justified by exigent circumstances. Maryland Penitentiary v. Hayden, 387 U.S. 299, 98 S.Ct. 1642, 24 L.Ed. 2d 782 (1967) It should also be noted that in State v. Rosemary Helfricht, no exigent circumstances whatsoever were known to Trooper Campbell at the time he forcibly entered the Helfricht home. His only knowledge was that the Helfricht automobile had been involved in a one car accident. The Trooper did not know whether the flat tire precipitated the accident; or, whether an animal had run in front of Mrs. Helfricht, she trying to avoid it; or, whether she had been run off the road by a passing motorist. He certainly did not have probable cause to believe that the driver of the automobile was a drunk driver and he was in "hot pursuit". This becomes especially clear when one considers that the Trooper did not even know when operation took place. (MCT 58-12 to 13)

Furthermore, Petitioner-Defendant submits that the State should not and cannot be allowed to bootstrap this unconstitutional search by claiming, as they did below, that this was not an entry into the home because the Troopers only stepped inside the door; and, then they infer that this should not be considered a search because Mrs. Helfricht voluntarily came into the room. The exclusionary rule was designated to prevent this sort of conduct by the severity of its remedy and no backsliding on it can be permitted. "It's purpose (exclusionary rule) is to deter - to compel respect for the constitutional guaranty in the only effectively available way, by removing the incentive to disregard it." Elkins v. U.S., 364 U.S. 206, 217 (1960). Petitioner-Defendant suggests to the Court that allowing law enforcement officials to "only" step inside a citizen's home without his/her consent or a warrant flies in the face of the Fourth Amendment.

When this is compared to the facts of the Welsh case, it becomes obvious how egregious a constitutional violation the Troopers' entry into the Helfricht home was.

In Welsh, a witness observed the defendant driving his car erratically and eventually swerving off

the road. The defendant then left and walked home. When the police arrived, they were told by the driver-witness that the driver-defendant was either very inebriated or very sick. The police checked the driver's registration card and responded to defendant's home, entered, and arrested the defendant for driving while intoxicated. In Welsh, the police at least knew when operation was and had an eyewitness who related defendant was drunk. Without even this bare minimum of facts present in the Helfricht case, it is Petitioner-Defendant's position that the Troopers were clearly in violation of defendant's constitutional rights. Particularly, when one considers that:

> Whether there is reasonable necessity for a search without waiting to obtain a warrant certainly depends somewhat on the gravity of the offense thought to be in progress, as well as the hazards of the method attempting to reach it. It is to me a shocking proposition that private home, even quarters in a tenement, may be indiscriminately invaded at the discretion of any suspicious police officer engaged in following up offenses that involved no violence or threats of it. McDonald v. United States, 335 U.S. 451 at 459-460 (1958) (Jackson, J. concurring).

Applying the foregoing to the facts at hand, the Petitioner-Defendant submits the Troopers forcible entry into the Helfricht home should be no less shocking to this Court.

For the reasons expressed herein and authorities cited in support thereof, the Petitioner-Defendant respectfully requests the Court to issue a Writ of Certiorari.

Respectfully submitted,

EDWARD J. McKENNA, JR.
Attorney for Petitioner-Defendant

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NJ
APPELLATE DIVISION
A-5054-83T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

vs.

ROSEMARY HELFRICHT,

Defendant-Appellate.

Submitted March 13, 1985, 1985 - Decided March 29, 1985

Before Judges Furman and Havey.

On Appeal from the Superior Court, Law Division, Monmouth County

McKenna, Liska & Leone, attorneys for appellant (Phil H. Leone on the brief).

John A. Kaye, Monmouth County Prosecutor, attorney for respondent (James W. Kennedy, Assistant Prosecutor, of counsel).

PER CURIAM

Defendant appeals from her conviction of drunk driving, N.J.S.A. 39:4-50, after a trial de novo on the municipal court record. We affirm.

In reliance upon Welsh v. Wisconsin, ____ U.S. ____, 104 S. Ct. 2091, 80 L. Ed. 2d 732 (1984),

defendant argues before us that the testimony of the arresting state troopers as to her physical and mental condition should have been suppressed because of their illegal entry into her home. We agree with the trial judge that the issue of illegal search and seizure was waived because it was not raised within 30 days after the initial plea, R. 3:5-7(a)(f); State v. Martin, 87 N.J. 561, 566 (1981). Defendant's motion to suppress evidence was brought three weeks preceding the trial de novo and two months after the municipal court conviction but was withdrawn at the start of the trial de novo.

Defendant's argument in reliance upon Welsh is groundless. There the United States Supreme Court held that the exigent circumstances exception should not be extended to a warrantless nighttime entry into petitioner's home to arrest him for a civil traffic offense carrying a maximum penalty of a $200 fine. On the appeal before us the state troopers upon their entry had reasonable grounds for suspicion that defendant was guilty of drunk driving, N.J.S.A. 39:4-50, and of leaving the scene of an accident, N.J.S.A. 39:4-129, both quasi-criminal offenses for which 30 days'

imprisonment was the maximum penalty for a first offense. Moreover, the exigent circumstances were compelling. Defendant's husband in the doorway admitted that she had been driving the car which the state troopers had come upon between 3:30 and 4 in the morning in the middle of a nearby public street with a door open, the key in the ignition, one front tire flat and its left side dented in. In addition to their duty to investigate quasi-criminal motor vehicle violations, the state troopers had the duty to ascertain whether defendant had suffered injuries, a concern which was not present factually in Welsh.

Defendant raises the further constitutional issue that under Berkemer v. McCarty, ___ U.S. ___ 3138, 82 L. Ed. 2d 317 (1984), Miranda warnings, which were not given to her, were constitutionally prerequisite to her custodial interrogation upon her arrest for drunk driving. Berkemer represents a "clear break" with existing law of this state, see State v. Macuk, 57 N.J. 1, 15-16 (1970). As such it should not be applied retroactively. See State v. Gervasio, 94 N.J. 23, 32 (1983), declining to give retroactive effect to Delaware v. Prouse, 440 U.S.

648, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979), which declared that random stops of motor vehicles on public roads violate the Fourth Amendment.

Defendant raises four additional issues: that it was not proper for the municipal court judge to proceed with the trial in the absence of a prosecuro; that judicial notice of the nature of the human body's absorption and dissipation of alcohol was improper; that the State failed to prove that she was operating a motor vehicle under the influence of alcohol; and that the State must prove that the breathalyzer is a scientifically reliable instrument before it can admit the breath test readings.

Based upon our consideration of the entire record in the light of the applicable law, we conclude that the four additional issues raised by defendant are clearly without merit, R. 2:11-3(e)(2).

Affirmed.

SUPREME COURT OF NEW JERSEY
C-807 SEPTEMBER TERM 1984

23,930

STATE OF NEW JERSEY,

Plaintiff-Respondent,

vs.

ON PETITION FOR CERTIFICATION

ROSEMARY HELFRICHT,

Defendant-Petitioner.

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-5054-83T4 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 13th day of June, 1985.

CLERK OF THE SUPREME COURT

PDA 5

SUPREME COURT OF NJ
M-1031 SEPTEMBER TERM
1984

STATE OF NEW JERSEY,

Plaintiff-Respondent,

vs. ORDER

ROSEMARY HELFRICHT,

Defendant-Movant.

This matter having been duly presented to the Court, it is ORDERED that the motion for a stay of the judgment of this Court pending defendant's filing for a single Justice stay before the Honorable William Brennan, Jr., pending application to the Supreme Court of the United States for a writ of certiorari is granted through August 5, 1985; provided, however, that defendant makes application to that Court no later than July 31, 1985; and it is further

ORDERED that this order granting a stay shall automatically dissolve in the event defendant fails to make a timely request of the Supreme Court of the United States or that Court denies defendant's stay application.

PDA 6

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, on this 10th day of July, 1985.

CLERK OF THE SUPREME COURT

PDA 7

SUPREME COURT OF NJ
C-807 SEPTEMBER TERM 1984

23,930

STATE OF NEW JERSEY,

Plaintiff-Respondent,

vs.

ON PETITION FOR CERTIFICATION

ROSEMARY HELFRICHT,

Defendant-Petitioner.

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-5054-83T4 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 13th day of June, 1985.

CLERK OF THE SUPREME COURT

PDA 8

McKENNA, LISKA & LEONE, P.C.
Post Office Box 778
241 Maple Avenue
Red Bank, New Jersey 07701
(201) 741-6681
Attorneys for Defendant-Appellate

Plaintiff THE STATE OF NEW JERSEY vs. Defendant ROSEMARY HELFRICHT	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION CASE NO. APPEAL NO. Below 130-83 Appeal from Judgment of Superior Court of New Jersey, Law Division, Monmouth County Sat Below: Donald J. Cunningham, J.S.C. CIVIL ACTION NOTICE OF APPEAL

PLEASE TAKE NOTICE that the defendant-appellant, Rosemary Helfricht, hereby appeals to the Superior Court, Appellate Division, from a Judgment of conviction entered by the Honorable Donald J. Cunningham, sitting in the Superior Court of New Jersey, Law Division, Monmouth County on May 16, 1984. A copy of the Judgment appealed from is attached hereto.

COURT TRANSCRIPT REQUEST FORM

ROSEMARY HELFRICHT	Name of party requesting transcript
23 Downing Hill Lane Colts Neck, NJ 07722	Address of party requesting transcript
Phil H. Leone, Esq.	Name of attorney for party requesting transcript
241 Maple Avenue Red Bank, NJ 07710	Address of attorney
The State of NJ	Name of Plaintiff
vs.	
Rosemary Helfricht	Name of Defendant
130-83 (Below)	Appeal No. Below
Superior Court of NJ Law Division	Court from which appeal is taken
Robert Rostoff	Name of Court Reporter
Monmouth County Court House Freehold, NJ 07728	Address of Trial Court

It is hereby requested that you prepare for use on appeal an original and six copies of the following:

Hearing of Municipal Appeal April 27, 1984 Honorable Donald J. Cunningham. Herewith is deposit for transcript in the amount of $150.00.

PHIL H. LEONE, ESQ.
Attorney for defendant-appellant

Dated: July 9, 1984

cc: Clerk, Appellate Division, Superior Court
Administrative Office of the Courts
Attn: Chief, Reporting Services
Daniel Greenspan, Court Reporter Supervisor,
Monmouth County Superior Court
Monmouth County Prosecutor's Office
Douglas Dovats, Assistance Prosecutor

McKENNA, LISKA & LEONE, P.C.
Post Office Box 778
241 Maple Avenue
Red Bank, New Jersey 07701
(201) 741-6681
Attorneys for Defendant-Appellate

Plaintiff THE STATE OF NEW JERSEY vs. Defendant ROSEMARY HELFRICHT	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION CASE NO. APPEAL NO. Below 130-83 Appeal from Judgment of Superior Court of New Jersey, Law Division, Monmouth County Sat Below: Donald J. Cunningham, J.S.C. CIVIL ACTION NOTICE OF APPEAL

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WE DO hereby certify that we have complied with the provisions of Rule 2:5-3(a).

McKENNA, LISKA & LEONE, P.C.
Attorneys for Defendant-
Appellant

By: _____
PHIL H. LEONE

Dated: June 27, 1984

ORDER ON
MOTIONS/PETITIONS

THE STATE OF NJ

v.

ROSEMARY HELFIRCHT

SUPERIOR COURT OF NJ
APPELLATE DIVISION
DOCKET NO. A-5054-83T4
MOTION NO. M-4827-83
BEFORE PART H

JUDGES: MICHELS
GREENBERG

MOVING PAPERS FILED June 28, 1984
ANSWERING PAPERS FILED
DATED SUBMITTED TO COURT June 28, 1984
DATE ARGUED June 28, 1984
DATE DECIDED June 28, 1984

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS HEREBY ORDERED AS FOLLOWS:

	GRANTED	DENIED	OTHER
MOTION/PETITION FOR STAY PENDING APPEAL	X		X

SUPPLEMENTAL: It being represented that the Monmouth County Prosecutor consents to this application, the license revocation of two years is pending the disposition of the appeal.

FOR THE COURT:

MORTON I. GREENBERG, J.A.D.

WITNESS, THE HONORABLE MORTON I GREENBERG, JUDGE OF PART H, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, THIS 28TH DAY OF JUNE, 1984

CLERK OF THE APPELLATE DIV.

SUPREME COURT OF NJ
M-1031 SEPTEMBER TERM

STATE OF NEW JERSEY

Plaintiff-Respondent,

vs. ORDER

ROSEMARY HELFRICHT,

Defendant-Movant.

This matter having been duly presented to the Court, it is ORDERED that the motion for a stay of the judgment of this Court pending defendant's filing for a single Justice stay before the Honorable William Brennan, Jr., pending application to the Supreme Court of the United States for a writ of certiorari is granted through August 5, 1985; provided, however, that defendant makes application to that Court no later than July 31, 1985; and it is further

ORDERED that this order granting a stay shall automatically dissolve in the event defendant fails to make a timely request of the Supreme Court of the United States or that Court denies defendant's stay application.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, on this 10th day of July, 1985.

CLERK OF THE SUPREME COURT

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

August 5, 1985

Edward J. McKenna, Jr., Esquire
McKenna, Liska & Leone
241 Maple Avenue
Red Bank, NJ 07701

RE: Rosemary Helfricht v. New Jersey
A-88

Dear Mr. McKenna:

Your application for stay in the above-entitled case has been presented to Justice White, who has endorsed thereon the following:

"Denied
Byron R. White
8/2/85"

Very truly yours,

JOSEPH F. SPANIOL, JR.,
Clerk

By: _____
Christopher W. Vasil
Deputy Clerk

vm

cc: James W. Kennedy, Esq.

PDA 16